No. 89-1911 (3)

Supreme Court, U.S.
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IN THE SUPREME COURT of the UNITED STATES

OCTOBER TERM, 1989

ROBERT C. BELL, JR.

Petitioner,

v.

JOHN P. LYDEN, M.D.,

Respondent.

REPLY IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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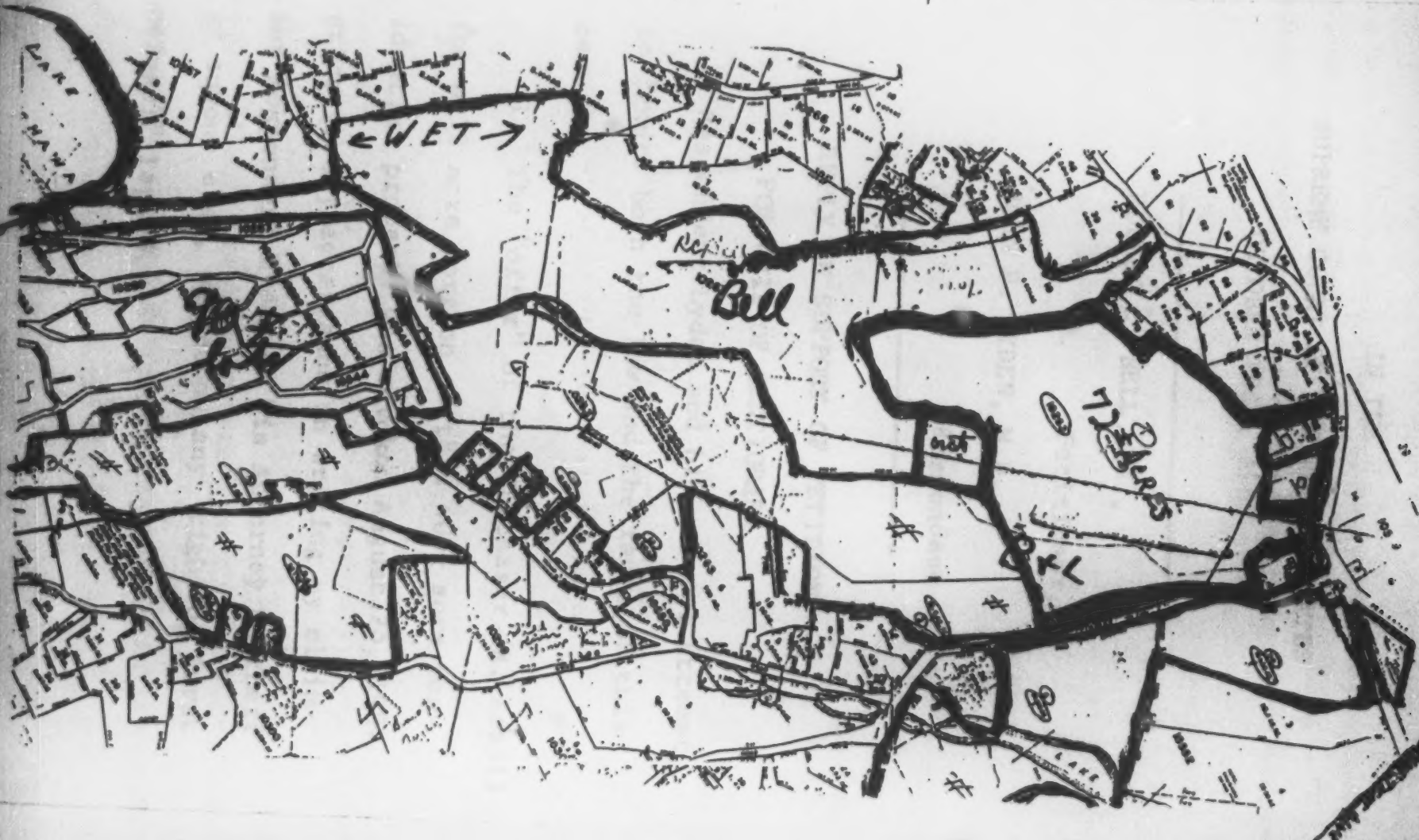
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Bell

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REPLY IN SUPPORT OF PETITION

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Respondent Lyden and his counsel attempt to ignore both the law and the facts of this case:

1. The "offer" of the Purchaser (R. Rezai) for a 72 acre portion of this 400+ acre residential property was revoked August 25, 1987 prior to any acceptance in writing by claimant Respondent Lyden or his Attorney Cherneff or anyone else, whereupon any "right of first refusal" lapsed.

2. The tardy letter received August 31,1987 from Attorney Cherneff, who had no written authority from anyone, merely advised that Respondent Lyden "intended" to exercise his "right of first refusal".

3. Respondent Lyden tardily attempted to exercise his claimed thirty (30) day right of refusal more than 76 days later. He asked to close 90 days after the initial offer, which had long been revoked.

4. "Time of closing" was of the essence. An arbitrator cannot arbitrarily extend such, and certainly not for a period of several years as Arbitrator Humbach has done here by making the transaction dependent upon Town approvalabout which nothing has apparently been done.

5. Respondent Lyden and his attorney began this attempt to claim Lyden's ownership of this access area to this large property only after other buyers appeared August 27 and October 13, 1987, etc. with multimillion dollar written offers for the entire partnership property. These were promptly submitted to Respondent Lyden and his counsel and doubtless influenced them in bringing this proceeding.

6. When a Town upzones land from quarter-acre to 4-acres, as here, and charges sub-division fees of $5,000 per lot, in advance, and takes four years, more or less, to clear a subdivision application as does the Town of Lewisboro, the rights of property owners are violated under Article XIV of the United States Constitution and the several Civil Rights Acts, as amended.

7. The function of our national Government and this Supreme Court is to enable this country to function as a unit. When local units undertake to block or even excessively increase the cost of housing development, limitations should be placed on such strictures. That is what is respectfully requested here. No home requires four acres or even two acres of land. Anyone who wants such a home may have it. But he should not require his neighbor to do likewise. The days of four acre zoning,- and even two acre zoning are past. The children of such families should be permitted to have houses closer to home. Two and four acre zones are excessive and an invalid exercise of local police power.

8. Present day "zoning" is relatively new in the law. It grew out of the somewhat surprising U.S. Supreme Court decision approving zoning"in principle" in Euclid, .. Ohio, which wanted to keep "industry" out of a particular area of the village. (Village of Euclid v. Ambler Realty Co., 272 U.S. 365 (1926)). Since "Euclid", the control of neighboring land has become a penchant and/or privilege of many people who seek to regulate what other people do or do not do with their property. The sole authority and control for such activity rests on the constitutional "police power" of government. "Police Power" is Constitutionally limited to matters pertaining to "health", or "morals", or "safety" i.e. principally "sanitation", and "proper conduct", and "due care". Such are commonly embraced within the term "general welfare".

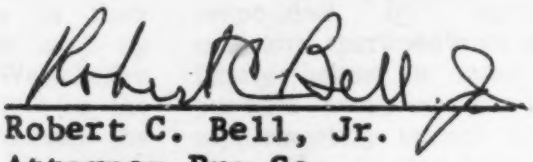
We have no quarrel with the "Euclid" v case or its progeny. We only want to build needed housing, which is the only thing that this particular real estate is good for. This has not been easy. This case is not unlike the cases involved in Mount Laurel Township v. Public Advocate of N.J. (53 N.J. 522, 416 Atl.2d 886)(1980), where development efforts were repeatedly blocked by local strictures, where such, as here, had no relevance to health, or morals, or safety (and were often contra the general welfare). The Mount Laurel case should be implemented in a manner which will permit it to function as obviously intended. A one acre ceiling on household zoning could and should give a reasonable limited and timely answer and should resolve most of the more serious problems involved in current zoning questions.

CONCLUSION

The Petition for Writ of Certiorari should be granted.

DATED: August 14, 1990
New Canaan, Connecticut 16840

Respectfully submitted,



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THE LEDGER

Wednesday, January 8, 1986
Telephone 763-8821 or 438-6544

Affordable Housing

New York City: it's where the salaries are.

It stands to reason that the people making those salaries are going to want to live within a reasonable distance to their workplace. So they snap up homes in northern Westchester for $200,000-$250,000 (on the average) and they become the commuters that make up a healthy chunk of this area's residents.

And, if the times happen to be reasonably prosperous, as they are now, and the metropolis grows, there'll be more of a demand for housing. What's already there will go up in price, and new homes will come on the market at prices that will raise eyebrows even by today's standards.

Combine that with the spillover of big business into the suburbs (such as the IBM's and the PepsiCo's into towns like Somers), and it doesn't take a person with an MBA to understand where the housing prices are going to go.

Through the roof.

It's been a problem in northern Westchester for years already, but now the numbers

Our local town officials are not the blame for the situation, but they are left with the chore of finding solutions to it.

Lewisboro and Bedford have responded by legalizing assessory apartments in single-family homes, a move that provides homeowners with a supplementary income to help them afford to stay here, while at the same time providing renters an affordable option.

Pound Ridge Supervisor Peter Robohm says an accessory apartments law is going to be considered in that town this year.

That's a move in the right direction, although even that can only have a modest effect.

Bedford has adopted a floating senior citizen housing zone that addresses the problem for the elderly population, to some degree.

What else can be done? Are the towns willing to use zoning to give middle income families in general a chance? That's a tough question, since it balances against the towns' desire to protect the environment.

HOMER CUMMINGS
WILLIAM STANLEY 1881-1940
MAX OSCAR TRUITT
J. EDWARD BURROUGHS, JR.
WILLIAM B. DONNELLY
JOHN W. CROSS
ALBERT L. REEVES, JR.

CARY HUN ZUWER
ALFRED E. NOTARIANNI
RICHARD A. FITZGERALD
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1625 K STREET, NORTHWEST
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TELEPHONE
DISTRICT 0777

CABLE ADDRESS
"CUMTRU" WASHINGTON

August 20, 1952

TO WHOM IT MAY CONCERN

This is to certify that I am acquainted with Robert C. Bell, Jr., who resides on South Main Street, New Canaan, Connecticut. He is presently practicing law with the firm of Cummings & Lockwood at Number One Atlantic Street, Stamford, Connecticut.

I have known Mr. Bell a good many years. I also knew his father, Judge Robert C. Bell, presently United States District Judge residing in St. Paul, Minnesota. Mr. Robert C. Bell, Jr., received an A.B. degree in 1933 from the University of Minnesota and the degree of LL.B. in 1936 from the Harvard Law School. He has had experience in a wide range of subjects. He was employed in the Lands Division of the Department of Justice at St. Paul, Minnesota, in connection with important condemnation work. He is experienced in corporation and tax law. He has also had experience in the United States Department of Labor in the Wage & Hour Division. In addition to this, he was an attorney with the National Defense Advisory Commission under Wm. S. Knudsen, and as time went on handled matters of constantly increasing importance. He was in the United States Army from January 1944 to December 1945 and was later connected with the Judge Advocate General's Division and was also legal officer in the Army Medical Purchasing Office and for about six months was a member of the War Department Board of Contract Appeals in the Office of Under-Secretary of War Robert Patterson. He was also connected with the War Production Board as Senior Attorney and was a special assistant to Honorable John Lord O'Brian.

I have had contact with Mr. Bell in various ways and at various times. His present age is about 40 years. It is my estimate of him that he is a man of unusual legal attainments and is eminently well qualified to take charge of any legal matters that may be entrusted to him. So far as his character, industry, integrity and loyalty are concerned, no one could stand higher. I have every confidence in him, and it gives me satisfaction to recommend him without reservation.

Homer Cummings

2A

WHO'S WHO IN THE WORLD

BELL, ROBERT COLLINS, lawyer; b. St. Joseph, Mo., Sept. 19, 1912; s. Robert Cook and Mamie Burke (Collins) B.; m. Mary Katherine Morris, Mar. 22, 1941; children—Robert III, Marianne. Student Carleton Coll., 1929-32; A.B., U. Minn., 1933; J.D., Harvard U., 1936. Bar: Minn. 1936, Conn. 1942, D.C. 1949, N.Y. 1953. Assoc. Fowler, Youngquist, Furber, Taney and Johnson, Mpls., 1936-37; atty. U.S. Wage and Hour Div.-Minn., N.D., S.D., Mont., 1939-40, War Prodn. Bd., 1940-42; assoc. Cummings and Lockwood, Stamford, Conn., 1942-52; ptnr. Smith Mathews, Bell and Solomon, N.Y.C., 1952-62; sole practice, New Canaan, Conn., 1962—; pros. atty., New Canaan, 1948-50. Mem. War Dept. Bd. Contract Appeals, Office of Under Sec. of War, 1944-45. Mem. ABA, Conn. Bar Assn., Internat. Bar Assn. Democrat. Congregationalist. Clubs: Harvard (N.Y.C.); Tokeneke (Darien, Conn.); Masons. Obtained judgements totalling over 25 million dollars on behalf of the Potawatomi, Miami and Chippewa Indian Tribes in U.S. Ct. Claims and U.S. Indian Claims Commn. Home: 528 Main St, New Canaan, CT 06840 Office: 528 Main St, New Canaan, CT 06840

BELL, MARY-KATHERINE, lawyer; b. Los Angeles, July 7, 1910; d. Weldon Branch and Vina (Cowan) Morris; m. Robert Collins Bell, Mar. 22, 1941; children—Robert Collins III, Marianne Bell Reifenheiser. B.A., Stanford U., 1934; J.D., George Washington U., 1943. Bar: D.C. 1943, N.Y. 1952, Conn. 1960. Atty., Cummings & Lockwood, Stamford, Conn., 1944-45, Shearman & Sterling, N.Y.C., 1948-77, Ivey, Barnum & O'Mara, Greenwich, Conn., 1978-83; asst. sec. to Assn. Bar City of N.Y., 1946-47; atty. to Conf. on Personal Fin. Law, N.Y.C., 1947-48; sole practice, New Canaan, Conn., 1983-84; mem. Tax Adv. Com. of Am. Law Inst. Co-editor: U.S. Bankruptcy Guide, 1948. Mem. Democratic Town Com. Mem. Conn. Bar Assn., Delta Gamma. Clubs: Cosmopolitan (N.Y.C.), Tokeneke (Darien). Home: 528 Main St New Canaan CT 06840 Died May 24, 1984

AFFIDAVIT OF SERVICE

STATE OF CONNECTICUT)
) ss.: NEW CANAAN
COUNTY OF FAIRFIELD)

PETER D. WEST being duly sworn, deposes and says he is over the age of 18 and is not a party in this action; that on the 13th day of August, 1990, the deponent served three copies of the annexed Reply Brief in the following manner:

By mailing the same in a sealed envelope with postage prepaid there, in a post-office of the United States Postal Service within the State of Connecticut, located 2 Pine Street, New Canaan, Connecticut, addressed to the last known address of the addressee as indicated below:

TO: James G. Sweeney, Esq.
Attorney for Respondent
Shamberg Marwell Cherneff
Hocherman & Davis, P.C.
55 Smith Avenue
Mount Kisco, New York 10549
(914) 666-5600

PETER D. WEST

Sworn to before me this
18th day of August, 1990.

STEPHEN J. KARL

Notary Public

STEPHEN J. KARL